UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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July 21, 2004

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Subject: *In re Dennie L. and Mindee R. Pravecek,*
Chapter 7; Bankr. No. 04-40643

Dear Counsel:

The matter before the Court is the Motion to Reschedule Hearing filed by Debtors on July 16, 2004, and the objection to the Motion filed by Sioux Falls Federal Credit Union on July 19, 2004. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As discussed below, Debtors' Motion to Reschedule Hearing will be denied.

Summary. Dennie L. and Mindee R. Pravecek ("Debtors") filed a Chapter 7 petition on May 7, 2004. On their schedule of personal property, they listed two vehicles, a 1997 Dodge Caravan valued at $2,500 and a 1995 Chevrolet Lumina valued at $350. Among their secured creditors, they listed Sioux Falls Federal Credit Union ("Credit Union") and stated the Credit Union had a "Lien" on the Dodge for $4,300.00[1] and a "Loan" on

[1] On their schedule of secured creditors, Debtors stated the Dodge was worth $2,500 and that the amount of the Credit Union's claim was $4,300. However, Debtors also stated that the unsecured portion of the Credit Union's claim on the Dodge was

the Chevrolet for $800.00. Debtors did not declare either vehicle exempt.

On May 19, 2004, the Credit Union filed a Motion for Relief From the Automatic Stay and to Compel Abandonment. It stated it had a secured interest in both vehicles, that the debt owed was $6,837.93, that Debtors were delinquent on their loan payments, and that Debtors did not have any equity in the collateral.

Debtors responded to the Motion on June 9, 2004. They stated Debtor Denny Praveck had given the Credit Union a security interest in the Dodge and that both Debtors had given the Credit Union a security interest in the Chevrolet. Debtors disputed whether the Credit Union had a "dragnet" security interest in both vehicles under a "DrafTopper Loan Agreement" and whether that agreement was enforceable, both on legal and equitable grounds. Debtors also said they were current on payments (apparently on their two "regular" car notes with the Credit Union), that the Credit Union was adequately protected, and that the Credit Union did not have cause for relief from stay. Debtors sought and obtained a delay in the first scheduled hearing on the Credit Union's Motion so they could conduct more discovery and possibly file an adversary proceeding regarding the validity, priority, and extent of the Credit Union's lien or liens.

Debtors commenced an adversary proceeding against the Credit Union on July 15, 2004. They asked the Court to determine that their vehicles were not cross-collateralized by the DrafTopper loan from the Credit Union. No bankruptcy law issues were raised by their complaint.

On July 16, 2004, Debtors filed a motion again asking that the hearing on the Credit Union's relief from stay and abandonment motion be rescheduled. Debtors said the Credit Union was going to raise the issue of whether Debtors could retain the vehicles and continue making payments without signing a reaffirmation agreement or redeeming the vehicles. They said these issues and the issues raised in their adversary proceeding should be heard together.

The Credit Union objected to Debtors' second rescheduling

$4,300.

motion on July 19, 2004. The Credit Union stated Debtors were not current with payments on their regular notes or on the third note that is challenged in the adversary proceeding. Further, the Credit Union argued that since Debtors did not have any equity in the vehicles, whether the Credit Union is adequately protected is not an issue under 11 U.S.C. § 362(d)(2). The Credit Union also challenged Debtors' standing to object to the relief from stay motion and also to commence the adversary proceeding because the vehicles were bankruptcy estate property, not Debtors' property.

Debtors filed a reply on July 21, 2004. They stated they are again current on the payments on the notes they agree are valid. They said the Credit Union had argued at the meeting of creditors that the vehicles were undervalued and that it could not take a contrary position at the relief from stay and abandonment hearing. Finally, Debtors stated that Bankruptcy Rule 7017 and Fed.R.Civ.P. 17 is applicable and gives them a reasonable time to resolve the problem. Debtors said they can resolve the "real party in interest" problem by filing their own motion to have the vehicles abandoned to them and by filing an amendment to their schedules to claim exempt any equity in the property or by getting the case trustee to join forces with them. Debtors admitted there "clearly is no equity [in the vehicles] above any allowed exemptions[.]"

Discussion. The Court agrees with the Credit Union that Debtors' standing to contest the relief from stay motion is questionable.[2] The vehicles are presently property of the bankruptcy estate. Debtors have not reaffirmed the debt on their vehicles. Accordingly, the record does not disclose any interest Debtors have in the vehicles other than a present possessory interest.

Second, there is no merit to making the Credit Union wait to resolve its Motion until the adversary proceeding is heard. Foremost, the present record establishes a ***prima facie*** case for relief and abandonment. In their schedules and in their July 21, 2004, Debtors readily admit there is no equity in either vehicle for the bankruptcy estate. The Credit Union also has

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[2] Debtors' standing to bring the adversary will have to be addressed in the adversary.

cast significant doubt on whether Debtors have standing to bring the adversary proceeding. Finally, the many non bankruptcy law issues raised in Debtors' adversary are more appropriately heard by another court.

In their reply, Debtors stated they might file their own abandonment motion or they might amend their exemptions to claim the vehicles. The Court notes that neither action will derail the Credit Union's motion nor necessarily create standing before this Court. An abandonment under 11 U.S.C. § 544, which the Credit Union already has requested along with relief from stay, would remove the vehicles from the bankruptcy estate and from this Court's jurisdiction. An uncontested claim of exemption in the vehicles will also remove the vehicles from the bankruptcy estate, 11 U.S.C. § 522(b), and the Court would have limited jurisdiction to determine issues related to that exempt property. 28 U.S.C. § 157(b)(2).

There is also no reason to delay the hearing on the Credit Union's motion to see whether Debtors can interest the case trustee is participating. The trustee had notice of the Credit Union's motion on May 21, 2004, and has apparently chosen not to participate.

For these reasons, Debtors' motion to reschedule the July 28, 2004, hearing on the Credit Union's Motion for Relief From the Automatic Stay and to Compel Abandonment is denied. An appropriate order will be entered.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)